

NIH POLICY MANUAL

2300-310-1 NEPOTISM

Issuing Office: OHRM 496-4491

Release Date: 05/15/98

1. **Explanation of Material Transmitted:** This chapter is being revised to update records retention and disposal, management controls, and organizational nomenclature.
2. **Filing Instructions:**

Remove: NIH Manual 2300-310-3 dated 04/28/94.

Insert: NIH Manual 2300-310-1 dated 05/15/98.
3. **Distribution:** This information is distributed via electronic mail to all Executive Officers, Personnel Officers, and Administrative Officers who may redistribute within their IC as appropriate. Copies in Word Perfect and .PDF format are also available for downloading on the Office of Human Resource Management website at: <http://www1.od.nih.gov/ohrm/issuances/>

For information on the :

- **content of this chapter**, contact the **issuing office listed above**.
- **NIH Manual System**, contact the **Office of Management Assessment, OA**, on 496-2832.
- on the **Office of Human Resource Management** website where the full text of this chapter is available. <http://www1.od.nih.gov/ohrm/issuances/>

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A. **PURPOSE:** This document provides the NIH policy on nepotism. Nepotism is the appointment, employment, promotion, or advancement of a relative in a job, or the advocacy of such an action by any public official in a position to influence, directly or indirectly, these personnel decisions.

B. **REFERENCES:** 5 CFR Part 310 - Employment of Relatives

C. **COVERAGE:**

This policy applies to all types of employment at NIH, including the: competitive service, excepted service (including Title 42), Federal Wage System, Commissioned Corps, Senior Executive Service, and the Senior Biomedical Research Service. In addition, this policy also applies to selections for and advancement through non-employment training programs, including the Visiting Fellowship Program and assignments under the Intramural Research Training Authority.

D. **DEFINITIONS:**

1. **Agency** - The term "agency" as used in this policy means NIH.
2. **Appointment and Employment** - Discretionary personnel actions including initial hires, reinstatements, transfers, reassignments and details.
3. **Promotion and Advancement** - Discretionary personnel actions which increase an employee's grade, pay, or potential for advancement. Included are assignment of performance ratings, quality step increases, within-grade increases, cash, time-off, or honor awards and selection for training opportunities which could lead to promotion.
4. **Public Official** - Means an officer, a member of the uniformed services, and employee, and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion or advancement.
5. **Relative** - Means an aunt, brother, brother-in-law, daughter, daughter-in-law, father, father-in-law, first cousin, grandchild, grandparent, half brother, half sister, legal guardian, mother, mother-in-law, nephew, niece, sister, sister-in-law, son,

son-in-law, spouse, stepbrother, stepdaughter, stepfather, stepmother, stepsister, stepson, or uncle. NIH extends the term “relative” to include close, personal relationships between consenting persons who share the same household.

6. **Advocacy** - Any action which promotes, defends, endorses, supports or pleads the cause of another person.
7. **Chain of Command** - Is the line of supervisory personnel that runs from a public official to the head of the agency.

E. POLICY: The prohibition of nepotism applies to the appointment, employment, promotion, advancement of a relative, recommendation for an award, or the advocacy of such an action, by any public official in a position to influence, directly or indirectly, these personnel decisions. As a matter of NIH policy, the nepotism restrictions also apply to training positions and other positions in which individuals are assigned to the NIH but are not Federal employees (e.g., Intramural Research Training Awards, Guest Workers, Visiting Fellows), and to close, personal relationships between consenting persons who share the same household. Special Volunteers and individuals serving on other types of voluntary assignments are excluded from this policy.

F. RESTRICTED ACTIVITIES:

1. **Advocacy** - A public official may not advocate (recommend orally or in writing) a relative’s appointment, employment, promotion or advancement where the official exercises jurisdiction, influence or control; nor advocate a relative for appointment, promotion, or advancement anywhere in the official’s own IC, other IC, or other NIH organizational components over which the official has jurisdiction, influence or control. A public official who recommends a relative, or recommends a relative for consideration by a public official standing lower in the chain of command for appointment, employment, promotion or advancement is deemed to have engaged in advocacy. In addition, the appearance of advocacy as well as actual advocacy must be avoided.
2. **Personnel Actions** - A public official may not participate in or influence any discretionary personnel action, e.g., appointment, employment, recommendation for an award, promotion, or advancement of his/her own relative. A public official with jurisdiction over the agency must also abstain from influencing the selection process. This includes participation in a search committee or selection or promotion panel that could control or influence a decision affecting a relative. Additionally, a subordinate of a public official may not make a personnel decision concerning that official’s relative; such a decision must be made at a management level higher than that of the public official.

A personnel action is not prohibited if it involves the appointment of a preference eligible if (1) his/her name is within reach for selection from an appropriate

certificate of eligibles and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

3. **Supervisory Relationships Between Relatives** - Cases where any direct or indirect supervisory relationship between relatives exist must be addressed immediately. Where it is not feasible to transfer or reassign an employee from the organizational supervision of a relative, all personnel decisions regarding the lower level employee must be made higher in the chain of command above that of the higher level employee involved. A subordinate of the higher ranking relative may initiate a personnel action (e.g., promotion, performance appraisal, recommendation for award, etc.), if the action is reviewed and approved by an official at a higher organizational level than both employees. Where it is not feasible to transfer or reassign an employee from the supervision of a relative and thus the appearance of nepotism exists, justification for the continued supervisory relationship must be submitted to and approved by the Director of the IC, or in cases where approval by the IC Director is not appropriate, an official at a higher organizational level than both relatives.

G. RESTRUCTURING REPORTING RELATIONSHIPS: It may be necessary to arrange a reporting relationship outside the IC, affected organizational unit or even outside of the IC in order to eliminate a direct or indirect supervisory relationship between relatives, e.g., an Office of the Director official could serve as the reviewing official for purposes of approving performance appraisals and ratings for an IC employee. In those cases where direct or indirect supervisory relationships exist between relatives, and a reassignment or transfer is not feasible, IC Personnel Officers will provide advice and assistance to higher level management in restructuring reporting relationships to eliminate a conflict of interest. The Office of Human Resource Management (OHRM) is also available for advice and assistance in restructuring reporting relationships.

H. RESPONSIBILITIES:

1. **Supervisors and Managers** - It is the responsibility of supervisors and managers to ascertain, to the extent possible, (i.e., without violating the privacy of employees) that their organization is free from nepotism or the appearance of nepotism, whether or not supervisors and managers are directly involved in the actual or perceived nepotism. Where problems are found to exist, supervisors and managers will be required to report such relationships higher in the chain of command, and with the advice and assistance of their IC Personnel Officer and/or OHRM, will initiate appropriate action, including disciplinary action when required, to correct the situation.
2. **IC Personnel Officers** - IC Personnel Officers will serve as the primary point of contact to answer questions and concerns from their employees regarding nepotism. IC Personnel Officers will maintain records of relationships involving

nepotism and provide advice to supervisors and managers on how to resolve problem cases, including appropriate disciplinary action that can be taken, if needed. IC Personnel Officers are also responsible for taking all reasonable actions to prevent nepotism or the appearance of nepotism in their IC for those mechanisms for which they have oversight, e.g., reviewing applications or resumes as one way of checking whether an individual has a relative who might be considered, i.e., appointment, promotion, award, etc.

3. **IC Executive Officers** - IC Executive Officers are responsible for designating appropriate individuals to provide review of pertinent documentation or other mechanisms not under the jurisdiction of their Personnel Offices, e.g., Intramural Research Training Award assignments. IC Executive Officers will maintain records of such relationships along with reports of any corrective actions or modifications in assignments taken to avoid problems from such relationships.
4. **Office of Human Resource Management (OHRM)** - OHRM develops and communicates policies regarding nepotism at NIH and provides advice and assistance to ICs in resolving problem cases.

I. CORRECTIVE ACTIONS AND PENALTIES: When a violation of nepotism regulations or policy occurs, corrective action(s) will be taken to remedy the situation as soon as possible, e.g., employee reassigned or reporting relationships restructured so that a direct or indirect supervisory relationship is terminated. In addition, public officials found to have violated nepotism regulations or policy may face appropriate disciplinary action which will be proposed on a case-by-case basis, depending on the severity of the violation(s) involved.

J. CONFLICT OF INTEREST RESTRICTIONS: The Standards of Ethical Conduct for Employees of the Executive Branch require that all employees take appropriate steps to avoid any appearance of loss of impartiality when performing their official duties. Thus, unless they have prior authorization, employees should not participate in a matter that would affect a personnel action or the compensation interests of a member of their household, whether or not the member is a relative. The test of an appearance of conflict of interest is whether a reasonable person with knowledge of the relevant facts would question the employee's impartiality in the matter.

K. MANAGEMENT CONTROLS

1. Office Responsible for Reviewing Management Controls Relative to this Chapter (Issuing Office)

Through this issuance, the Office of Human Resources Management, Office of the Director, NIH is accountable for the method used to ensure that management controls are implemented and working.

2. Frequency of Review: Once every five years.
3. Method of Review: OHRM will provide oversight to assure that management controls are in place and working effectively to prevent nepotism in personnel actions by reviewing IC records and activities to: 1) determine whether the nepotism policy is functioning as intended to prevent problems, 2) determine the extent to which ICs are adhering to NIH policies and procedures on the employment of relatives or other employees with close relationships, and 3) assess whether the operating guidelines need to be strengthened or modified.
4. Review Reports are sent to the Deputy Director for Management, NIH.

L. RECORDS RETENTION and DISPOSAL:

All records (**e-mail** and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records, Appendix 1, *NIH Records Control Schedule Item 2300-730-8, Standards of Conduct Files.*" Data on situations meeting the definition of nepotism and the restructuring of reporting relationships must be retained as long as both parties work in the same IC.

NIH e-mail messages. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. ***These records must be maintained in accordance with current NIH Records Management guidelines. If necessary, back-up file capability should be created for this purpose. Contact your IC Records Officer for additional information.***

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are sometimes retained for significant periods of time, e-mail messages and attachments are likely to be retrievable may be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.